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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JOSE CERON et al.,

Plaintiffs and Respondents,

v.

SALLY LIU,

Defendant and Appellant.

A148341

(City & County San Francisco
Super. Ct. No. CGC15549095)

Defendant Sally Liu, a landlord, appeals an order denying her special motion to strike pursuant to the anti-SLAPP statute (Code Civ. Proc.,¹ § 425.16). In essence, she contends that the complaint and its causes of action are based on conduct protected by the litigation privilege (Civ. Code, § 47, subd. (b)), and that plaintiffs’ cause of action for malicious prosecution should have been stricken as meritless. Plaintiffs did not file a respondent’s brief.² We affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs Jose Ceron, Monica Medina, Brian Medina, and Judy Judkins are tenants who live on rental property owned by Liu. Ceron, Monica Medina, and Brian Medina live in Unit 1 of the property. Judy Judkins lives in Unit 3.

¹ All further statutory references are to the Code of Civil Procedure unless otherwise specified.

² When a respondent fails to file a brief, “the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant.” (Cal. Rules of Court, rule 8.220(a)(2).)

Plaintiffs filed a complaint against Liu in late November 2015. According to the general allegations of the complaint, Liu had engaged in a chronic pattern of harassment whereby she refused to accept or collect plaintiffs' rent payments, then tried to evict them for failure to pay rent. The general allegations included that Liu filed a frivolous unlawful detainer action against the Unit 1 plaintiffs in 2007, that she filed another frivolous unlawful detainer action in 2013, and that she filed two unlawful detainer actions against all plaintiffs in 2015. Also included were general allegations that Liu served the Unit 1 plaintiffs with dozens of frivolous three-day notices to pay rent or quit, and that she served all plaintiffs with two three-day notices in April 2015 preceding her filing the two 2015 unlawful detainer actions, despite knowing she had not cashed their rent checks.

The complaint pled five causes of action that incorporated all of the general allegations: (1) violation of section 37.10B of the San Francisco Residential Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"); (2) unfair, unlawful and fraudulent business practices in violation of Business and Professions Code section 17200 ("unfair business practices"); (3) negligence; (4) intentional infliction of emotional distress; and (5) malicious prosecution.

As relevant here, the first cause of action alleged that plaintiffs suffered damages as a result of Liu's violations of section 37.10B of the Rent Ordinance, which included her refusal to cash rent checks, her filing unlawful detainer actions, and her violating plaintiffs' quiet enjoyment rights. The second cause of action stated that Business and Professions Code section 17200 "makes it unlawful to engage in unlawful, unfair or fraudulent business acts or practices," then alleged that "[b]y her acts and intentional behavior, [Liu] unlawfully, unfairly and fraudulently failed to provide and maintain the Premises in a habitable manner." The third cause of action alleged plaintiffs suffered damages due to Liu negligently owning and maintaining the premises and, "in particular," her negligent failure to provide and maintain the premises in a habitable

manner. The fourth cause of action alleged that plaintiffs suffered extreme mental distress due to Liu's "acts and failures," and that Liu intentionally or recklessly caused plaintiffs emotional distress "when she refused to cash their rent checks and filed frivolous unlawful detainers against each of them . . . [and] also served Plaintiffs with dozens of frivolous, defective notices to quit for the sole purpose of harassing Plaintiffs." The fifth cause of action alleged plaintiffs were damaged by "the frivolous unlawful detainers" and specifically complained about Liu filing the two unlawful detainer actions in 2015. Plaintiffs alleged that Liu filed those 2015 unlawful detainer actions maliciously and for improper purposes, and that plaintiffs were the prevailing parties as Liu dismissed the cases on the eve of trial. In addition to incorporating the general allegations, each cause of action incorporated the allegations of any and all preceding causes of action.

Liu filed a special motion to strike under the anti-SLAPP statute. She contended that plaintiffs' causes of action were based on protected activities, such as her serving three-day notices and filing unlawful detainer actions, and that plaintiffs could not establish the requisite likelihood of success on the merits. Specifically, Liu argued that the litigation privilege applied to conduct underlying plaintiffs' first four causes of action, and that probable cause supported her filing the two unlawful detainer actions in 2015 which were the basis of plaintiffs' fifth cause of action for malicious prosecution.

The trial court denied Liu's special motion to strike in its entirety. The court found plaintiffs' third cause of action for negligence did not arise from protected activity. Further, relying on *Mann v. Quality Old Time* (2004) 120 Cal.App.4th 90 (*Mann*) and *Wallace v. McCubbin* (2011) 196 Cal.App.4th 1169 (*Wallace*), the court found that plaintiffs' first, second, and fourth causes of action for violation of Rent Ordinance section 37.10B, unfair business practices, and intentional infliction of emotional distress were "mixed" causes of action, and that plaintiffs had "shown [a] probability of prevailing on the merits" of these claims. Finally, the court found that, although the fifth cause of action for malicious prosecution arose out of protected activity, plaintiffs

nonetheless showed a probability of prevailing on the merits. Liu appeals. (§ 425.16, subd. (i).)

DISCUSSION

A. Governing Law and Standard of Review

The anti-SLAPP statute provides: “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1).) “ ‘[A]ct[s] in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ include[s]: (1) any written or oral statement or writing made before a . . . judicial proceeding . . . , (2) any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body . . . or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (*Id.*, subd. (e).) “ ‘[S]tatements, writings and pleadings in connection with civil litigation are covered by the anti-SLAPP statute, and that statute does not require any showing that the litigated matter concerns a matter of public interest.’ ” (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1478 (*Feldman*).)

Resolution of an anti-SLAPP motion involves two steps. “At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is

legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 (*Baral*).)

We conduct a de novo review of the trial court's decision to deny Liu's anti-SLAPP motion. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.)

B. Analysis

1. Claims Arising from Protected Activity

In assessing whether a defendant has satisfied the burden under the first prong of the section 425.16 analysis, “ ‘the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity.’ ” (*Feldman, supra*, 160 Cal.App.4th at p. 1478.) “Assertions that are ‘merely incidental’ or ‘collateral’ are not subject to section 425.16. [Citations.] Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.” (*Baral, supra*, 1 Cal.5th at p. 394.) “[I]n teasing out whether we are dealing with protected conduct under section 425.16, subdivision (b), ‘courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.’ ” (*Area 51 Productions, Inc. v. City of Alameda* (2018) 20 Cal.App.5th 581, 595, quoting *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1063.) In considering whether a defendant sustained his or her initial burden of proof, the court relies on “ ‘the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.’ ” (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79, citing § 425.16, subd. (b).)

On appeal, Liu contends all of the causes of action are based on either the service of three-day notices to pay rent or quit, or the filing of unlawful detainer actions. But her filing of three-day notices and unlawful detainer actions, she claims, are protected activities.

“An unlawful detainer action and service of notices legally required to file an unlawful detainer action are protected activity within the meaning of section 425.16. [Citation.] ‘A cause of action arising from such filing or service is a cause of action arising from protected activity.’ ” (*Newport Harbor Offices & Marina, LLC v. Morris Cerullo World Evangelism* (2018) 23 Cal.App.5th 28, 45.)

With regard to the causes of action for violation of section 37.10B of the Rent Ordinance (first), unfair business practices (second), and intentional infliction of emotional distress (fourth), the trial court found these were so-called “mixed” causes of action, which are those that allege “both protected and unprotected activity.” (*Baral, supra*, 1 Cal.5th at p. 382.) We agree. Our independent review of the pleadings and the parties’ declarations discloses these causes of action appear based in part on allegations of unprotected activity, e.g., Liu’s harassment of plaintiffs and refusal to cash plaintiffs’ rent checks. That said, these causes of action also appear based in part on the conduct that Liu presently identifies as protected activity.³ These causes of action incorporate the complaints’ general allegations, which include the allegations that Liu served the Unit 1 plaintiffs with dozens of frivolous three-day notices and Liu filed frivolous unlawful detainer actions in 2007, 2013, and 2015. The first cause of action for violation of section 37.10B of the Rent Ordinance also specifically alleges that Liu violated the Rent Ordinance by filing unlawful detainer actions after refusing to cash plaintiffs’ rent checks, and violating plaintiffs’ quiet enjoyment rights. Further, the fourth cause of

³ We address only the allegations of protected activity and the claims supported by them that Liu identifies on appeal.

action specifically alleges that Liu intentionally or recklessly caused plaintiffs emotional distress when she “filed frivolous unlawful detainers against each of them . . . [and] also served Plaintiffs with dozens of frivolous, defective notices to quit for the sole purpose of harassing Plaintiffs.”

With regard to the third cause of action for negligence, the trial court found it did not arise out of protected activities. Based on our independent review, we tend to agree that, by and large, this cause of action does not appear to be based on any protected activity within the meaning of section 425.16, subdivision (e). As noted, this cause of action contains the specific allegation that it is based on Liu’s conduct of negligently owning and maintaining the premises and, “in particular,” her negligent failure to provide and maintain the premises in a habitable manner, thereby causing injury. Nonetheless, the general allegations regarding Liu’s filing of unlawful detainer actions and her service of the three-day notices are incorporated into this cause of action, as are the allegations of the first and second causes of action for violation of section 37.10B of the Rent Ordinance and unfair business practices. It is not clear that plaintiffs’ cause of action for negligence is not based on the conduct that Liu now identifies as protected activity.

As for the fifth cause of action for malicious prosecution, the trial court found this arose out of protected activity. Our independent review leads us to agree. (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 215 [“The plain language of the anti-SLAPP statute dictates that every claim of malicious prosecution is a cause of action arising from protected activity because every such claim necessarily depends upon written and oral statements in a prior judicial proceeding”].) This cause of action not only incorporated the general allegations discussed above and the allegations in the preceding four causes of action, but it also specifically contained allegations concerning Liu’s filing the two unlawful detainer actions in 2015.

We thus conclude that Liu has made the threshold showing that all of plaintiffs' causes of action were based, at least in part, on protected activity and thus subject to section 425.16.

2. Probability of Prevailing on the Merits

We now assess the sufficiency of plaintiffs' showing that "each challenged claim based on protected activity is legally sufficient and factually substantiated." (*Baral*, *supra*, 1 Cal.5th at p. 396.) To establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), plaintiffs must " " "demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' ' ' (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88–89.) At this stage of the analysis, we consider "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) In considering this second prong, "[t]he court does not weigh evidence or resolve conflicting factual claims. . . . It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law." (*Baral*, at pp. 384–385.)

Preliminarily, we note the trial court below found the causes of action for violation of section 37.10B of the Rent Ordinance, unfair business practices, and intentional infliction of emotional distress were mixed causes of action that completely survived Liu's special motion to strike because plaintiffs "have shown probability of prevailing on the merits." In so concluding, the trial court indicated it was relying on the rule applied in *Mann*, *supra*, 120 Cal.App.4th 90, and *Wallace*, *supra*, 196 Cal.App.4th 1169, that "[w]here a cause of action refers to both protected and unprotected activity and a plaintiff can show a probability of prevailing on *any part of its claim*, the cause of action is not meritless and will not be subject to the anti-SLAPP procedure. [¶] Stated differently, the anti-SLAPP procedure may not be used like a motion to strike under section 436,

eliminating those parts of a cause of action that a plaintiff cannot substantiate.” (*Mann*, at p. 106; *Wallace*, at p. 1212.)

About three months after the trial court issued its ruling, however, *Baral*, *supra*, 1 Cal.5th 376, disapproved the rule applied in *Mann* and *Wallace*. (*Baral*, at p. 396, fn. 11.) As *Baral* explained, “an anti-SLAPP motion, like a conventional motion to strike, may be used to attack parts of a count as pleaded.” (*Id.* at p. 393.) Thus, *Baral* instructed that courts must strike claims for relief based on protected activity when a plaintiff has not carried the burden of demonstrating a probability of prevailing on the challenged claim. (*Id.* at p. 396.) Courts must also strike allegations of protected activity supporting the stricken claim from the complaint, “unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing.” (*Ibid.*)

Proceeding under *Baral*, we now examine whether plaintiffs established a probability of prevailing on their claims that are based on protected activity.

(a) *First Cause of Action for Violation of Section 37.10B of the Rent Ordinance, Second Cause of Action for Unfair Business Practices, Third Cause of Action for Negligence, and Fourth Cause of Action for Intentional Infliction of Emotional Distress*

Liu argues that to the extent plaintiffs’ claims for relief in their first four causes of action are based on her filing three-day notices and unlawful detainer actions, they are barred by the litigation privilege of Civil Code section 47, subdivision (b). For the reasons set out below, with regard to their first four causes of action, we agree the litigation privilege prevents plaintiffs from showing a probability of prevailing to the extent their claims are based on Liu’s unlawful detainer actions. We disagree, however, with Liu’s broad application of the litigation privilege to all of the three-day notices at issue in this case.

“The litigation privilege is ‘relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must overcome to demonstrate a

probability of prevailing.’ ” (*Feldman, supra*, 160 Cal.App.4th at p. 1485.) “ ‘The litigation privilege, codified at Civil Code section 47, subdivision (b), provides that a “publication or broadcast” made as part of a “judicial proceeding” is privileged. This privilege is absolute in nature, applying “to all publications, irrespective of their maliciousness.” [Citation.] “The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.” [Citation.] The privilege “is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards.” ’ ” (*Ibid.*, italics omitted.) “The privilege immunizes a defendant from liability for all claims (other than malicious prosecution) based on privileged communications,” including unfair business practices, negligence, and intentional infliction of emotional distress. (*Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 709; *Feldman, supra*, 160 Cal.App.4th at pp. 1485–1486.)

It is well settled that the filing of unlawful detainer actions falls within the litigation privilege. (*Feldman, supra*, 160 Cal.App.4th at p. 1486.) With regard to their first four causes of action, Plaintiffs fail to argue any way around the litigation privilege as to any claims based on Liu’s acts of filing unlawful detainer actions. Accordingly, those claims must be stricken from the first, second, third, and fourth causes of action. (*Baral, supra*, 1 Cal.5th at p. 396.)

With regard to Liu’s filing three-day notices, the law specifies that a three-day notice is protected by the litigation privilege “ ‘when it relates to litigation that is contemplated in good faith and under serious consideration.’ ” (*Feldman, supra*, 160 Cal.App.4th at p. 1486.) Application of the litigation privilege to a notice to quit is thus a question of fact. (*Id.* at p. 1487.) “The question of fact is not whether the service was malicious or done with a bad intent or whether it was done based upon facts the

landlord has no reasonable cause to believe to be true. Rather, the factual question . . . is ‘[w]hether a prelitigation communication relates to litigation that is contemplated in good faith and under serious consideration.’ ” (*Ibid.*)

Here, having independently reviewed the pleadings and the parties’ declarations, we conclude plaintiffs have carried their burden of showing the litigation privilege would not apply to all of the dozens of frivolous and defective three-day notices Liu allegedly served on the Unit 1 plaintiffs (Ceron and the Medinas). Plaintiff’s evidence includes the declaration of Unit 1 plaintiff Monica Medina, who asserts that Liu chronically refused to accept or collect her rent checks and served them with dozens of frivolous and defective three-day notices.

That said, and by contrast, plaintiffs failed to carry their burden of showing the litigation privilege does not apply to the three-day notices Liu served on Unit 3 plaintiff Judkins. None of plaintiffs’ evidence speaks to any three-day notices served on Judkins, and none demonstrates that those notices were not related to litigation contemplated in good faith and under serious consideration. (*Feldman, supra*, 160 Cal.App.4th at p. 1487.)

Additionally, plaintiffs have not shown the litigation privilege does not apply to claims based on the three-day notices Liu served on them in April 2015. The complaint alleges that Liu followed up her service of these particular three-day notices by filing unlawful detainer actions against plaintiffs on April 17, 2015. The April 2015 three-day notices were referenced in these unlawful detainer complaints and were thus clearly connected to those actions. Liu’s evidence showed she threatened plaintiffs with unlawful detainer actions after serving them the April 2015 three-day notices. Nothing in plaintiffs’ evidence demonstrates that these particular three-day notices were hollow threats, or that Liu never seriously intended to file actions against plaintiffs after serving them. (See *Feldman, supra*, 160 Cal.App.4th at pp. 1475, 1488 [finding litigation privilege applied to service of a notice to quit because cross-defendant filed unlawful

detainer action “promptly”—about half a month—after serving it, and there was no argument or evidence from the opposing party that the notice to quit was a hollow threat[.]”)

Accordingly, in addition to plaintiffs’ claims for relief based on Liu filing unlawful detainer actions, to the extent plaintiffs seek relief based on Liu serving plaintiff Judkins with three-day notices and Liu serving all plaintiffs with the three-day notices in April 2015, those claims must also be stricken from the first, second, third, and fourth causes of action. (*Baral, supra*, 1 Cal.5th at p. 396.)

(b) Fifth Cause of Action for Malicious Prosecution

With regard to the cause of action for malicious prosecution, the trial court determined plaintiffs established a probability of prevailing. We agree to the extent the claim is based on the 2015 unlawful detainer actions.

“To prevail on a malicious prosecution claim, the plaintiff must show that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice.” (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 292.) Unlike the preceding causes of action, the litigation privilege does not apply to the tort of malicious prosecution. (*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 360.)

As to the first element, case law provides that “[a] voluntary dismissal is presumed to be a favorable termination on the merits.” (*Sycamore Ridge Apartments LLC v. Naumann* (2007) 157 Cal.App.4th 1385, 1400 (*Sycamore Ridge*).) Here, the pleadings and the parties’ declarations show Liu voluntarily dismissed her two 2015 unlawful detainer actions, which had been consolidated with a prior action that plaintiffs filed against Liu based on allegations similar to those in the complaint here. Plaintiffs’ pleadings and evidence reflected that Liu dismissed her unlawful detainer actions on the eve of, or on the day of trial in the prior consolidated action. Liu offered no evidence to

rebut the favorable termination presumption. As such, plaintiffs satisfied this element of their malicious prosecution claim as to the two 2015 unlawful detainer actions.

With regard to the second and third elements, “[a]n action is deemed to have been pursued without probable cause if it was not legally tenable when viewed in an objective manner as of the time the action was initiated or while it was being prosecuted. The court must ‘determine whether, on the basis of the facts known to the defendant, the institution of the prior action was legally tenable.’ [Citation.] ‘The resolution of that question of law calls for the application of an *objective* standard to the facts on which the defendant acted.’ ” (*Sycamore Ridge, supra*, 157 Cal.App.4th at p. 1402.) “The malice element of the malicious prosecution tort goes to the defendant’s subjective intent in initiating the prior action. [Citation.] For purposes of a malicious prosecution claim, malice ‘is not limited to actual hostility or ill will toward the plaintiff. Rather, malice is present when proceedings are instituted primarily for an improper purpose.’ [Citation.] ‘Suits with the hallmark of an improper purpose’ include, but are not necessarily limited to, ‘those in which: “ ‘(1) the person initiating them does not believe that his claim may be held valid; (2) the proceedings are begun primarily because of hostility or ill will; [or] (3) the proceedings are initiated solely for the purpose of depriving the person against whom they are initiated of a beneficial use of his property.’ ” ’ ” (*Id.* at p. 1407.) Again, in determining whether these elements are satisfied, we do not weigh the evidence or resolve conflicting factual claims. (*Baral, supra*, 1 Cal.5th at pp. 384–385.)

Here, plaintiffs’ pleadings and declarations show that Liu wrongly refused to accept and cash plaintiffs’ rent checks, and then served them with notices to quit and filed the meritless 2015 unlawful detainer actions, in order to harass them and to try to improperly coerce them into leaving their homes. This satisfies the second and third elements of the malicious prosecution claim. We have examined Liu’s arguments to the contrary and find them unavailing. Thus, we conclude the trial court properly denied the

motion to strike the malicious prosecution claim to the extent it was based on the 2015 unlawful detainer actions.

That said, plaintiffs' opposing declarations are silent concerning the unlawful detainer actions Liu filed prior to 2015. Thus, to the extent this cause of action incorporates and is based on the general allegations regarding Liu's filing unlawful detainer actions prior to 2015, plaintiffs have not established a probability of prevailing and such claim is stricken from the fifth cause of action.

(c) Additional Allegations in the Cross-complaint

Finally, we turn to *Baral*'s instruction that allegations of protected activity supporting stricken claims must be eliminated from the complaint, "unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing." (*Baral, supra*, 1 Cal.5th at p. 396.) Applying this mandate here, the allegation in the first cause of action that Liu violated section 37.10B of the Rent Ordinance by "filing unlawful detainers" must be stricken. Further, the allegation in the fourth cause of action for intentional infliction of emotional distress that Liu intentionally, or with reckless disregard, caused plaintiffs emotional distress when she "filed frivolous unlawful detainers against each of them" must also be stricken. (See *Sheley v. Harrop* (2017) 9 Cal.App.5th 1147, 1175.)

DISPOSITION

In summary, with regard to the causes of action for violation of section 37.10B of the Rent Ordinance, unfair business practices, negligence, and intentional infliction of emotional distress, we find plaintiffs failed to overcome application of the litigation privilege and failed to show a probability of prevailing to the extent their claims are based on: (i) Liu's unlawful detainer actions, (ii) the three-day notices Liu served on Unit 3 plaintiff Judkins, and (iii) the three-day notices Liu served on all of the plaintiffs in April 2015. That said, plaintiffs have shown the litigation privilege would not apply to all the other dozens of frivolous three-day notices Liu allegedly served on the Unit 1

plaintiffs (Ceron and the Medinas). As for the fifth cause of action for malicious prosecution, plaintiffs have shown a probability of prevailing to the extent the claim is based on the 2015 unlawful detainer actions, but they have not shown a probability of prevailing as to any pre-2015 unlawful detainer actions Liu filed.

The trial court's order is reversed in part and hereby modified to grant the special motion to strike as follows: (1) in paragraph 16, the second sentence starting with "The unlawful detainer in the 2007" and ending with "remove Plaintiffs in unit #1 from their home" is stricken; (2) in paragraph 17, the first sentence stating "Liu filed an additional frivolous unlawful detainer which failed as a result of her notice being defective in 2013" is stricken; (3) in paragraph 18, the last sentence stating "In April of 2015, Defendant served 3-day notices to pay or quit against these Plaintiffs for the rent she was refusing to collect" is stricken; (4) in paragraph 19, the sentences beginning with "Defendant, knowing" and ending with "homes and their respective futures" is stricken from reference in the first four causes of action; (5) in paragraphs 20 and 21, the last sentences stating "Then incurred additional expenses in defending the unlawful detainer" is stricken; (6) paragraphs 22 and 23 are stricken; (7) in paragraph 29 concerning the first cause of action, the allegation that Liu violated section 37.10B of the Rent Ordinance by "filing unlawful detainers for failing to pay rent" is stricken; and (8) in paragraph 41 concerning the fourth cause of action, the allegation that Liu "filed frivolous unlawful detainers against each of them for a failure to the [sic] pay the rent that she refused to collect" is stricken; and (9) in paragraph 41, plaintiff Judkins is stricken from the allegation that "Liu has also served Plaintiffs with dozens of frivolous, defective notices to quit." The order of the trial court is affirmed in all other respects.

Each party shall bear his or her own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

Fujisaki, J.

WE CONCUR:

Siggins, P.J.

Petrou, J.

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